IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 13362 OF 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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NIRANJAN MILLS LIMITED - Petitioner(s)
Versus
KALICHARAN RAMFER - Respondent(s)

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Appearance :
Mrs. Ketty A. Mehta for Petitioner(s).
Mrs. Sangeeta N. Pahwa for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/08/2007

ORAL JUDGMENT

The petitioner-Industry, being aggrieved by the award dated 20th February, 1992 and order dated 21st August, 1996 passed by the

learned Labour Court, Surat in T. Application No.300 of 1987 and the appellate order dated 20th September, 2000 passed by the learned Member, Industrial Tribunal, Surat in Appeal (IC) No.6 of 1996, is before this Court with a submission that the award passed by the learned Labour Court and the order passed by the learned Appellate Court are contrary to law.

2. The short facts necessary for disposal of the present Writ Application filed under Article 227 of the Constitution of India, are that a show cause notice/charge-sheet was issued to the workman stating, *inter alia*, that the respondent was working as a *badli* worker and that he was asked to behave properly and conduct himself properly by the Clerk, but, he misbehaved with the said Clerk. According to the petitioner-Industry, after giving due opportunity of hearing to the workman, a finding into the guilt of the workman was recorded. Being aggrieved by the final order of removal, the workman took up the matter before the learned Labour Court.

2.1 The present petitioner-Industry appeared before the learned Labour Court and submitted that due opportunity was given to the workman and as the workman was a *badli* worker, the reference at his instance was not maintainable.

2.2 After recording the evidence and hearing the parties, the learned Labour Court held that due and proper opportunity was not given to the workman at the time of domestic inquiry; it accordingly set aside the inquiry and directed reinstatement of the workman with full back-wages and continuity of service. The learned Appellate Court has confirmed the said award. The petitioner-Industry is before this Court under Article 227 of the Constitution of India.

3. Mrs. Ketty A. Mehta, learned Counsel for the petitioner-Industry, has raised two fold submissions, which I will take up one after another. It is contended by the learned Counsel for the petitioner that the records produced in the Labour Court by the Industry would clearly prove that as many as four opportunities were given to the workman and even by a Registered A. D. letter he was asked to appear, but, the workman did not avail the opportunity. She submits that the findings recorded by the learned Courts below are bad and deserve to be quashed.

4. Mrs. Sangeeta Pahwa, learned Counsel for the workman, on the other hand, submitted that present is a case where the learned Labour Court, after appreciating the evidence, has recorded the finding of fact and if the finding of fact is based on some evidence available on

the record, then, the High Court may not interfere simply because yet another view is possible.

5. After going through the award and the appellate order, I must express my inability to accept the argument raised by the learned Counsel for the petitioner. The learned two Courts have concurrently found that proper and due opportunity to defend was not given to the workman. The finding cannot be said to be perverse, nor can be condemned as based on no evidence. If the finding is based on some evidence, then, simply because yet another view is possible, the High Court, in its appellate jurisdiction under Section 100 of the Code of Civil Procedure, 1908 or in its power of superintendence under Article 227 of the Constitution of India, would not interfere. The said argument is rejected.

6. Mrs. Ketty Mehta next contended that undisputedly, the workman was a *badli* worker and therefore, he cannot get full back-wages and the benefit of continuity of service because the *badli* worker is not in the continuous service. Mrs. Pahwa, learned Counsel for the respondent, on the other hand, submitted that if the workman was unceremoniously removed from the work and the inquiry was bad, then, the ordinary rule is reinstatement with full back-wages.

7. If the workman was a *badli* worker, then, he could not be treated to be in the regular service. A *badli* worker under some settlement, arrangement, compromise or award is required to be given fixed day work in each and every month. If such workman is entitled to minimum work for minimum days or more, then, such workman can only be directed to be included in the list of the *badli* workers. The Apex Court has repeatedly observed that in cases of reinstatement of *ad hoc,* temporary or *badli* workers, the order should be to reinstate them by including them in the list maintained by the Industry. In view of the settled legal position, I am unable to hold that the learned Courts below were justified in giving the benefit of continuity of service to the workman, however, would be entitled to be reinstated as a *badli* worker.

8. So far as the question of back-wages is concerned, it is not in dispute before me that the *badli* worker does not get monthly wages, he gets wages for the days when he has worked or for a minimum period in a particular month in accordance with the arrangement, settlement, compromise or earlier award. In the present case, nothing has been brought on record by the other side that what was the arrangement or settlement between the Industry and the workman or union of the workmen.

9. Taking into consideration the totality of the circumstances, I hereby hold that the respondent-workman would be entitled to 15 days' wages for each month for the period he remained out of work. He would be reinstated henceforth and he would be again entitled to the wages, as would be available to the *badli* worker for the days he works. The award passed by the learned Labour Court below and the order passed by the learned Appellate Court are modified to the extent indicated above. Rule is made absolute. No costs.

[R.S.Garg, J.]

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